

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA for the
use of YEAROUT MECHANICAL, INC.,
a New Mexico Corporation,

Plaintiff,

v.

Civ. No. 10-465 JCH/KBM

AUSTIN COMMERCIAL CONTRACTORS,
L.P., a Delaware limited partnership,
FEDERAL INSURANCE COMPANY, FIDELITY
AND DEPOSIT COMPANY OF MARYLAND, and
TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA,

Defendants.

ORDER

The Court has received the timely-filed objections of Austin Commercial Contractors, L.P. (Austin) [Doc. 43] to the Magistrate Judge's Report and Recommendation [Doc. 40]. Pursuant to the referral from the district court [Doc. 33], the Court requests additional briefing.

As the Court understands the filings, Austin did not object to the conclusion that the case be sent to arbitration and this matter stayed. Instead, Austin raised the issue of whether the arbitration should be before the ACCLP or the CBCA. See Objections at 2. This constitutes a new issue not previously put before the Court. Plaintiff has not had a chance to respond.

Accordingly, the Court requests simultaneous briefs from the parties, not to exceed 15 pages, on the following issues:

(1) whether Austin has waived this issue, *see Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996); and

(2) if the issue is not waived, the arguments supporting the parties' respective positions. Briefing shall be due on or before March 5, 2011.

IT IS SO ORDERED.



Karen B. Molzen
United States Magistrate Judge